

## **BILL ANALYSIS**

Senate Research Center

H.B. 1987  
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Natural Resources  
5/12/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

H.B. 1987 extends the life of the petroleum storage tank remediation account from September 1, 2005, to September 1, 2007. This legislation is necessary because there are approximately 2,800 sites still being cleaned up today; the majority of these sites will not make the September 1, 2005, deadline. Although the Texas Commission on Environmental Quality (TCEQ) has removed ineligible sites from the program, many of these remaining sites will not meet the deadline because of circumstances beyond their control, including problems with off-site access, bankruptcy, withdrawal from the market of a large remediation contractor and/or geological issues unique to where the site is located. For example, there are over 350 sites above the Ogallala Aquifer in West Texas where corrective action activities have taken longer and are more expensive because of the depth of the groundwater.

The extension of the program will be funded from the existing fee currently paid by distributors of motor fuel when they remove motor fuel from a terminal.

H.B. 1987 will also allow TCEQ to place any sites remaining in the program after September 1, 2007, into the state-lead program for completion provided the owner or operator demonstrates progress in attempting to complete corrective action activities during the next two years. These sites should be placed in the state-lead program because they will be unable to obtain insurance coverage to continue corrective action activities at their expense and will make continued clean-up impossible for most owners or operators. Owners or operators may also decide not to enter TCEQ's state-lead program and complete remediation activities themselves.

H.B. 1987 removes the requirement that transporters of motor fuel be held responsible for depositing motor fuel into underground storage tanks which do not have a valid TCEQ-issued delivery certificate. Because deliveries often occur at night when most retail facilities are closed, carriers are often unable to verify these certificates each time they deliver motor fuel to a retail location. The owner or operator of the underground storage tank should be the only party held responsible for ensuring each tank has been issued a valid delivery certificate.

H.B. 1987 also makes a technical correction to certain cleanup standards impacting petroleum storage tanks. Under the state's new cleanup standards for underground storage tanks (Texas Risk Reduction Rules Program, effective September 1, 2003), contamination found in backfill surrounding a tank may trigger a full-scale remediation of the site containing the tank. Prior to September 1, 2003, contamination found in backfill was not considered a trigger because such contamination is common to almost all tanks, is usually limited in scope, and does not extend to the surrounding soils or ground water. This bill restores the cleanup standard for backfill that existed prior to September 1, 2003.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 7.156(c), Water Code, to delete existing text providing that a person commits an offense if the person physically delivers any regulated substances into an underground storage tank regulated under Chapter 26 (Water Quality Control) with certain exceptions. Makes a nonsubstantive change.

SECTION 2. Amends Section 26.342, Water Code, by adding Subsection (16-a) to define "subsurface soil."

SECTION 3. Amends Sections 26.3467(a) and (b), Water Code, as follows:

(a) Authorizes the owner or operator of an underground storage tank to comply with this subsection by obtaining a current copy of the certificate from the Internet website of the Texas Commission on Environmental Quality (TCEQ).

(b) Provides that an owner or operator of an underground storage tank who violates, rather than a person who knowingly violates, Subsection (a) commits an offense that is punishable by Section 7.156 (Violation Relating to Underground Storage Tank).

SECTION 4. Amends Section 26.351(f), Water Code, to require the person performing corrective action under this section, if the release from an underground or above ground storage tank was reported to TCEQ on or before December 22, 1998, to meet specific deadlines, including for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request to be submitted to the executive director no later than September 1, 2007, rather than 2005. Deletes existing text regarding agreements in writing regarding corrective action plans.

SECTION 5. Amends Section 26.355(b), Water Code, to provide that an owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless the site at which the release occurred has been admitted into the petroleum storage tank state-lead program under Section 26.3573(r-1). Makes conforming changes.

SECTION 6. Amends Section 26.3573, Water Code, by amending Subsections (d), (r), and (s) and adding Subsection (r-1), as follows:

(d) Deletes existing text referring to allotted percentages for necessary expenses for the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program. Makes a nonsubstantive change.

(r) Sets forth an exception, as provided by Subsection (r-1), to the provision that the petroleum storage tank remediation account is prohibited from being used to reimburse any person for corrective action performed after September 1, 2005.

(r-1) Defines "state-lead program." Requires the executive director of TCEQ to grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. Authorizes the petroleum storage tank remediation account (account) to be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. Authorizes an eligible owner or operator who is granted an extension under this subsection, no later than July 1, 2007, to apply to TCEQ in writing using a form provided by TCEQ to have the site subject to corrective action placed in the state-lead program. Requires the eligible owner or operator to agree, in the application, to allow site access to state personnel and state contractors as a condition in the state-lead program under this subsection. Requires the executive director, on receiving the application for placement in the state-lead program under this subsection, by order, to place the site in the state-lead program until the corrective action is completed to the satisfaction of TCEQ. Provides that an eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to TCEQ for any costs related to the corrective action.

(s) Prohibits the account from being used to reimburse any person for corrective action contained in a reimbursement claim filed with TCEQ after March 1, 2008, rather than 2006.

SECTION 7. Amends Section 26.361, Water Code, to provide that the reimbursement program established under this subchapter expires September 1, 2008, rather than 2006. Prohibits the

commission from using funds from the account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action on or after September 1, 2008, rather than 2006.

SECTION 8. Makes application of Section 27.3467(b), as amended by this Act, prospective.

SECTION 9. Effective date: September 1, 2005.